Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections 202(f), 202(i) and 301(i) of the Telecommunications Act of 1996	)	CS Docket No. 96-56
	)	
Cable Television Antitrafficking, Network Television, and MMDS/SMATV Cross-ownership Rules	)	DOCKET FILE COPY ORIGINAL
	)	

OPPOSITION TO PETITION FOR RECONSIDERATION

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, hereby opposes the Petition for Reconsideration (the "Petition") filed by the California Cable Television Association ("CCTA") in response to the Commission's March 18, 1996 *Order* in this proceeding. For the reasons set forth below, WCA urges the Commission to deny CCTA's frivolous Petition.

In March of this year, the Federal Communications Commission adopted the *Order* to amend its rules to conform to the self-effectuating provisions of Section 202(i) of the Telecommunications Act of 1996 (the "1996 Act") and to meet mandates contained in Sections 202(f) and 301(i) of the 1996 Act. Because the rule revisions merely conformed the Commission's rules to the 1996 Act, the Commission found pursuant to 5 U.S.C. § 553(b)(B) and Section 1.412(c) of the Commission's Rules that compliance with the normal notice and comment provisions of the Administrative Procedures Act was unnecessary.[1/]

Significantly, CCTA does not assert that the Commission erred in proceeding without the

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[1/] *See Order*, at ¶ 11.

usual notice and comment opportunities. Nor does CCTA assert that the Commission failed to promulgate rules that faithfully implemented Sections 202(f), 202(i) or 301(i) of the 1996 Act. Instead, CCTA would have the Commission reconsider the *Order* because the Commission did not restrict local exchange carriers ("LECs") from entering the wireless cable business unless they face effective competition — a topic that is not even broached in the 1996 Act.

Given the crushing workload facing the Commission in implementing the 1996 Act, it is insensitive, at best, for CCTA to even suggest that the Commission consider such an extraneous proposal in this proceeding Moreover, as a procedural matter, CCTA's petition for reconsideration is flawed, for it goes well beyond the scope of this proceeding. Section 202(i) of the 1996 Act bars the Commission from enforcing Section 613(a)(2) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (which absolutely banned cable operators from owning an MDS license in their cable service areas), where the cable system faces effective competition. Neither Section 202(i) nor any other provision of the 1996 Act indicates a Congressional desire to ban local exchange carriers from participating in the wireless cable industry. Thus, the Administrative Procedures Act and the Commission's Rules mandate that the Commission undertake a notice and comment rulemaking proceeding before even considering CCTA's proposal.

If CCTA desires to have its proposal considered, it should be directed to submit a petition for rulemaking pursuant to Section 1.401 of the Rules. Of course, CCTA should recognize that:

> the institution of a formal rulemaking proceeding in response to a petition for rulemaking is certainly not obligatory. Parties requesting rule changes, therefore, must recognize that they have the burden of

> convincing the Commission that the concerns expressed and the facts supporting them are sufficient to warrant the initiation of a formal proceeding.

Amendment of Sec. 73.658(k) of the Commission's Rules to Bar Multiple Exposure of More than one Episode of the same program (except for Local News or Public affairs programs) in Access Time on Stations Owned by or Affiliated with a National Television Network in the 50 Largest Television Markets, 63 F.C.C.2d 500 (1977). In WCA's view, CCTA's prospects for meeting its burden are nil.

The Commission should recognize that, on a substantive level, CCTA's petition is nonsensical. Read literally, CCTA would permit a LEC to enter the wireless cable market wherever the LEC faces effective competition. CCTA apparently has forgotten that a LEC entering the video marketplace today will virtually always face effective competition since it will have less than a 30% multichannel video market share.[2/] Thus, even were the Commission to adopt CCTA's proposal, LECs would be permitted to enter into the wireless cable industry either through new entry or acquisitions in all but a handful of rural markets were the existing wireless cable system exceeds a 30% market share.

Given CCTA's track record, WCA presumes that what CCTA really wants is to have the Commission foreclose LEC participation in the wireless cable industry in markets where the incumbent cable operator does not face effective competition. CCTA's proposal is an ill-conceived tautology — the Commission is asked to insulate monopoly cable providers from one of the most likely sources of effective competition until cable faces effective competition. Not

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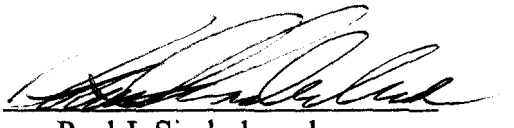
[2/] *See* 47 C.F.R. § 76.905(b)(1).

surprisingly, CCTA does not even attempt to provide a public interest justification for its proposal.[3/]

WHEREFORE, for the foregoing reasons, WCA urges the Commission to deny CCTA's petition.

Respectfully submitted,

WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

By: 
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May 29, 1996

[3/]It is worth noting that, for all of CCTA's complaints that its members are subject to restrictions on entry into wireless cable not faced by LECs, CCTA does not propose that the restriction on cable entry into wireless cable be lifted.

CERTIFICATE OF SERVICE

I, Deanna L. Susens, hereby certify that on this 29th day of May, 1996, I caused a copy of the foregoing Opposition to Petition for Reconsideration to be served on the persons specified below by first class U.S. mail, postage prepaid, or by hand delivery:

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*Via hand delivery